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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 793

LOUISIANA FINANCIAL ASSISTANCE COMMISSION, et al

Appellants

v.

BRYAN POINDEXTER, et al and
UNITED STATES OF AMERICA,

Appellees

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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ORTLIEB PRESS BATON ROUGE

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TO THE HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES

MAY IT PLEASE THE COURT:

Pursuant to Rule 16 4. of the Rules of this Court, Louisiana Financial Assistance Commission and its officers and

members file this brief in opposition to the motion to affirm filed by the United States.

This Honorable Court held in *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 that "The injunction against paying tuition grants and giving tax credits **while public schools remain closed** is appropriate and necessary since those grants and tax credits have been essential parts of the county's program, successful thus far, to deprive petitioners of the same advantages of a public school education enjoyed by children in every other part of Virginia." (page 233) (our emphasis)

Thereafter, in *Griffin v. State Board of Education*, 239 F. Supp. 560, a court constituted under 28 U.S.C. § 2281 to consider the constitutionality of Virginia's tuition grant statutes explicitly held "that they are not unconstitutional on their face, as fostering forbidden race distinctions; (2) that the grants may lawfully be used in a private, segregated, nonsectarian school if they do not constitute the preponderant financial support of the schools." (p. 562)

That court reached the conclusion stated independently of the Civil Rights Act of 1964, 78 Stat 241, 42 USC § 1971, but it referred to the definition in § 2000c (c) of "Public School" as one "operated by a state, subdivision of a state, or governmental agency within a state, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source." (our emphasis)

Although the court enjoined payment of tuition grants to pupils attending certain named schools where the grants exceeded the limits set, Virginia continues tuition grants to students attending schools which are not so preponderantly supported even if children of both races are not enrolled.

The decision in the present case is diametrically opposed o the decision in the Virginia case. Not because of the measure f funds, but because of what the court said is the policy of ouisiana, it declared the Louisiana tuition grant statute un-onstitutional per se even though Louisiana's public schools re wide open and largely integrated in fact as well as under ourt order to integrate, and even though the Louisiana sta-ute is not triggered or activated by considerations of race, nd even though children of both races receive tuition grants.

Thus, there is no way to harmonize the Virginia decision n *Griffin* and the Louisiana decision in *Poindexter*. The court f Louisiana clearly recognizes this, and not being bound by *Griffin* from which no appeal was taken, chose to go a differ-nt way.

The Solicitor General, too, recognizes the impossibility f harmonizing the two decisions for he says on page 8 of the notion to affirm—"Whatever the merits of the 'predominant upport' criterion adopted in *Griffin v. State Board of Educa-ion*, 239 F. Supp. 560 (E.D. Va.) the court below was justified n not following it here"—which he relates to purposes. He hen seeks to make a distinction between events in Virginia nd those in Louisiana as if such a comparison benefitted the 'irginia statute, utterly ignoring the pronouncement of this 'ourt in the earlier *Griffin* case from which we have quoted bove.

To argue that Virginia may make tuition grants within mits but that Louisiana may not make tuition grants within ie same limits because it is said that the statute in Louisiana as "conceived in the hope of perpetuating educational dis-rimination" (page 9 of motion to affirm) is to ignore the istory recorded by Your Honors in 377 U.S. 218, 221 as the massive resistance" in Virginia, and the undisputed fact

that no public schools were closed in Louisiana, no Louisiana Governor blocked the way of students, and the present Louisiana Governor is on record in this very case that the Louisiana tuition grant statute will not in anywise be used to replace the public school system.

It is not reasonable to say a public school means one thing with respect to state funds and another with respect to federal funds.

But above all, it is not reasonable to say that the Constitution of the United States means one thing in Virginia but another in Louisiana so that a statute constitutional in Virginia is unconstitutional in Louisiana.

We respectfully submit the motion to affirm should be denied and the appeal should be heard so that there may be uniformity in the meaning of our Constitution throughout our land.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Victor A. Sachse, one of the Attorneys for the Louisiana Financial Assistance Commission, its officers and members, appellants, herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 11th day of December, 1967, I served copies of the foregoing Brief in Opposition to Motion to Affirm on the several parties thereto; as follows:

1) On the United States, a plaintiff-intervenor, by air mailing copies thereof to Erwin H. Griswold, Solicitor General and John Doar, Assistant Attorney General, Department of Justice, Washington 25 D.C., Louis Lacour, Esq., United States Attorney for the Eastern District of Louisiana, at 400 Royal Street, New Orleans, Louisiana, Hugh W. Fleischer, Esq., United States Department of Justice, 1723 Masonic Building, New Orleans, Louisiana.

2) On Bryan Poindexter, a minor, by Lorraine Poindexter, his mother and next friend; Alfred Louis Larks, a minor, by Charles Larks and Cora Lee Larks, his parents and next friends; Anthony Jarrow, a minor, by Peter Jarrow and Ruby Jarrow, his parents and next friends; on behalf of themselves and other Negro Children and their parents similarly situated, by air-mailing a copy thereof to A. P. Tureaud and A. M. Trudeau, Esqs., 1821 Orleans Avenue, New Orleans, Louisiana 70116 and Jack Greenberg, Charles H. Jones, Jr., and Henry Aaronson, Esqs., 10 Columbus Circle, New York, New York.

3) On Mrs. Thelma Deamer, Carroll Leach, Rosetta Jiles and Mrs. Fannie Magee, defendant-intervenors, by air mailing copies thereof to Cy Courtney, Esq., National Bank of Commerce Building, New Orleans, Louisiana 70112, and Richard

Cadwallader, Esq., Louisiana National Bank Building, Baton Rouge, Louisiana.

4) On Garden District Academy, defendants, by air mailing copies thereof to Sydney J. Parlongue, Esq., National Bank of Commerce Building, New Orleans, Louisiana 70112.

5) On Ninth Ward Elementary School and Armond J. Duvio, and Carrollton Elementary School Association, defendants, by air mailing copies thereof to Walter E. Doone, Esq., Room 205, Southern Marine and Aviation Building, New Orleans, Louisiana 70112.

6) On Louisiana State Board of Education, defendant, by mailing copies thereof to Frank L. Dobson, Esq., Attorney General's Office, Capitol Building, Baton Rouge, Louisiana.

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